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Attorneys for Metropolitan Mortgage &
Securities Co., Inc. and the
Metropolitan Creditors' Trust

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Attorneys for Summit Securities, Inc.
and the Summit Creditors' Trust

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re . . .

**METROPOLITAN MORTGAGE &
SECURITIES CO., INC.,**

Debtor.

In re . . .

SUMMIT SECURITIES, INC.,

Debtor.

Jointly Administered Under:
No. **04-00757-W11**
Chapter **11**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
FIRST SUPPLEMENTAL ORDER
AUTHORIZING SALE OF TRUST
RECEIVABLES FREE AND
CLEAR OF LIENS**

(SELECT ASSETS FUND 1998-1)

THIS MATTER having come on regularly for hearing upon the Motion filed
November 12, 2007 [*Docket No. 13204*] (the "Motion for First Supplemental
Order"), of the Metropolitan Creditors' Trust ("Metropolitan") and the Summit
Creditors' Trust ("Summit"), by and through their respective counsel, for a First
Supplemental Order Authorizing Sale Of Trust Receivables Free And Clear Of
Liens (the "First Supplemental Order"), pursuant to the terms and conditions of

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1 the Order Authorizing Sale Of Structured Settlements Free And Clear Of Liens,
2 Approving Trust Receivables Purchase Agreement, And Granting Related Relief
3 (the “Sale Order”), entered herein on June 8, 2007 [Docket No. 13061], authorizing
4 and approving the sale by Metropolitan and Summit (the “Creditors’ Trusts” or
5 the “Sellers”) of certain portfolios of receivables, payments relating thereto, and
6 related assets from the Select Assets Fund 1998-1 that are held in trust and were
7 distributed or to be distributed to the Creditors’ Trusts, as beneficiaries of such
8 trust estate (the “Trust Portfolio Property”) to SSC Settlements, LLC (the
9 “Purchaser”), and in connection therewith, the issuance of Supplemental Court
10 Orders (as defined in the Sale Order); and the Court making the findings of fact
11 and conclusions of law set forth hereafter pursuant to Bankruptcy Rule 7052,
12 made applicable to this proceeding pursuant to Bankruptcy Rule 9014, with such
13 findings of fact to be construed as conclusions of law when appropriate, and with
14 such conclusions of law to be construed as findings of fact when appropriate, and with
15 all capitalized terms not otherwise defined herein having the meanings given such
16 terms in the Motion for First Supplemental Order, the Sale Order, or the Trust
17 Receivables Purchase Agreement (the “Purchase Agreement”), as the case may be;
18

21 NOW THEREFORE, the Court makes the following Findings of Fact:

22 1. This Court has jurisdiction over the Motion for First Supplemental
23 Order under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding
24

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1 under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion for First
2 Supplemental Order in this District is proper under 28 U.S.C. §§ 1408 and 1409.
3

4 2. The statutory predicates for the relief sought in the Motion for First
5 Supplemental Order are sections 105(a), 363, and 1146(c) of the Bankruptcy
6 Code and Bankruptcy Rules 2002 and 6004.

7 3. On February 4, 2004 (the "Petition Date"), Metropolitan and Summit
8 filed their respective petitions for relief pursuant to chapter 11 of the Bankruptcy
9 Code.

10 4. An Order Confirming The Third Amended Joint Reorganization Plan
11 Of Metropolitan Mortgage & Securities Co., Inc. And Summit Securities, Inc. was
12 entered on February 13, 2006, confirming the Third Amended Joint Plan of
13 Reorganization (the "Plan"). Pursuant to the Plan, the Metropolitan Creditors'
14 Trust and the Summit Creditors' Trust were created to fulfill the rights and
15 obligations set forth pursuant to the Plan and the Trust Agreements by which
16 they were created, including the duty to use all commercially reasonable efforts to
17 liquidate, sell or otherwise dispose of, as the case may be, all of the Metropolitan
18 Creditors' Trust Assets and the Summit Creditors' Trust Assets as soon as
19 reasonably possible, subject always to the Plan Administrator's obligation to take
20 all actions in her capacity as the Plan Administrator in a manner consistent with
21 the best interests of the Beneficiaries, with the powers conferred upon her under
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1 the Trust Agreements and the Plan and in accordance with the terms and
2 provisions of the Trust Agreements and the Plan.

3 5. As evidenced by the Certificate(s) of Service filed with this Court:
4 (i) due, proper, timely, adequate, and sufficient notice of the Motion for First
5 Supplemental Order and all transactions contemplated thereby, has been
6 provided in accordance with Bankruptcy Code sections 102(1), 105(a), 363, and
7 1112(b) and Bankruptcy Rules 2002 and 6004 and in compliance with the
8 Purchase Agreement; (ii) such notice was good, sufficient, and appropriate under
9 the circumstances; and (iii) no other or further notice of the Motion for First
10 Supplemental Order, the proposed sale, or the transactions contemplated thereby
11 is or shall be required.

12 6. A reasonable opportunity to object and be heard with respect to the
13 Motion for First Supplemental Order and the relief requested therein has been
14 afforded to all persons and entities set forth by the Standing Order, and as
15 required by the Purchase Agreement, including the Payees (as defined below), the
16 Annuity Provider, and the Obligor.

17 7. The Creditors Trusts' Trust Portfolio Property with the Annuitants
18 (the "Payees"), identified by Annuity Policy Number on Exhibit A attached to the
19 Motion for First Supplemental Order, in which Payees agreed to assign, and the
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1 Creditors' Trusts agreed to purchase certain payments payable under a
2 structured settlement agreement, is hereby assigned to Purchaser.
3

4 8. The Creditors' Trusts seek to assign the payment streams (the
5 "Periodic Payments"), identified in Exhibit A to the Motion for First Supplemental
6 Order that are payable through an annuity owned by Symetra Assigned Benefits
7 Service Company (the "Obligor") and issued by Symetra Life Insurance Company
8 (the "Annuity Provider"), to the Purchaser. The Annuity Provider and Obligor
9 shall remit the Periodic Payments in accordance with the payment streams set
10 forth in said Exhibit A to Stone Street Settlement Funding (the "Transferee") at
11 the following address: 39121 Treasury Center, Chicago, Illinois 60694-9100, or
12 such other address as the Transferee, or its successor(s), may designate.
13

14 9. The Periodic Payments shall be made to the Transferee even in the
15 event of death of a Payee. As of the date of entry of the First Supplemental Order,
16 Payees shall no longer have the power or authority to request changes to a
17 Payee's address or beneficiary designation relating to the Periodic Payments. The
18 Annuity Provider and Obligor shall remit the Periodic Payments to Transferee.
19

20 10. By making and delivering the Periodic Payments to the Transferee as
21 set forth herein, the Annuity Provider and Obligor shall have no liability to the
22 Payees for making the payments to the Transferee.
23

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1 11. The Transferee shall be liable to the Annuity Provider and Obligor for
2 any liabilities, taxes, or costs of any kind, including reasonable costs and
3 attorneys' fees arising from compliance by the Annuity Provider and Obligor with
4 the First Supplemental Order and/or arising as a consequence of the Transferee's
5 failure to comply with applicable law.

6 12. The First Supplemental Order shall in no way modify or negate the
7 ownership or control of the underlying contract by the Obligor and shall be
8 entered without prejudice to the rights of the Annuity Provider and the lack of
9 opposition by the Annuity Provider and Obligor to this transfer, and their
10 compliance with the First Supplemental Order, and the Court's entry of the First
11 Supplemental Order, shall not constitute evidence in this or any other matter
12 regarding: (i) the assignability of payments under a structured settlement
13 agreement or annuity contract or related contracts or whether such payments
14 can be assigned; (ii) the enforceability of provisions that restrict and/or preclude
15 assignment of payments under a structured settlement agreement or annuity
16 contract or related contracts or orders; (iii) the validity of other transactions
17 entered into by Transferee; or (iv) whether the Annuity Provider and the Obligor
18 have waived any rights in connection with any other litigation or claims or rights
19 other than the rights to the Periodic Payments as described above.

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1 13. The First Supplemental Order shall be binding upon and shall inure
2 to the benefit of any and all successors and assigns of the (a) Creditors' Trusts,
3 (b) the Purchaser, (c) the Payees, (d) the Transferee, and (e) other interested
4 parties.
5

6 14. The Court shall retain jurisdiction to interpret and enforce the
7 provisions of the First Supplemental Order in all respects, including, without
8 limitation, retaining exclusive jurisdiction to determine or resolve any and all
9 objections to or disputes among the parties with respect to the matters set forth
10 therein, provided however that, in the event the Court abstains from exercising,
11 or declines to exercise, jurisdiction with respect to any matter referred to in this
12 paragraph or is without jurisdiction, such abstention, refusal, or lack of
13 jurisdiction shall have no effect upon and shall not control, prohibit, or limit the
14 exercise of jurisdiction of any other court having competent jurisdiction with
15 respect to any such matter.
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18 15. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and
19 6006(d), the First Supplemental Order shall not be stayed for ten (10) days after
20 entry thereof, but shall be effective and enforceable immediately upon issuance
21 thereof. Time is of the essence in closing the transactions referenced herein, and
22 the Creditors' Trusts and the Purchaser intend to close such transactions as soon
23 as practicable. Therefore, any party objecting to entry of the First Supplemental
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1 Order must exercise due diligence in filing an appeal and pursuing a stay, or risk
2 its appeal being foreclosed as moot.
3

4 16. Findings of Fact and Conclusions of Law Re: First Supplemental
5 Order Authorizing Sale of Trust Receivables should be entered as set forth herein.
6

7 17. The First Supplemental Order should be entered in the form attached
8 to the Motion for First Supplemental Order as Exhibit C.
9

10 WHEREFORE, having entered the foregoing Findings of Fact, the Court
11 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the
12 following Conclusions of Law constitute Findings of Fact, they are adopted as
13 such.
14

15 1. All requirements of section 363(b) and (f) of the Bankruptcy Code and
16 any other applicable law relating to the sale of Portfolio Property have been
17 satisfied. Those parties asserting liens on, or other interests in, Portfolio Property
18 who did not object to the Motion for First Supplemental Order, or who have
19 withdrawn their objections, are deemed to have consented pursuant to section
20 363(f)(2) of the Bankruptcy Code.
21

22 2. This Court has jurisdiction over the Motion for First Supplemental
23 Order under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding
24 under 28 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion for First
25 Supplemental Order in this District is proper under 28 U.S.C. §§ 1408 and 1409.
26

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1 3. The statutory predicates for the relief sought in the Motion for First
2 Supplemental Order are sections 105(a), 363, and 1146(c) of the Bankruptcy
3 Code and Bankruptcy Rules 2002 and 6004.

4 4. As evidenced by the Certificate(s) of Service filed with this Court:
5 (i) due, proper, timely, adequate, and sufficient notice of the Motion for First
6 Supplemental Order and all transactions contemplated thereby, has been
7 provided in accordance with Bankruptcy Code sections 102(1), 105(a), 363, and
8 1112(b) and Bankruptcy Rules 2002 and 6004 and in compliance with the
9 Purchase Agreement; (ii) such notice was good, sufficient, and appropriate under
10 the circumstances; and (iii) no other or further notice of the Motion for First
11 Supplemental Order, the proposed sale, or the transactions contemplated thereby
12 is or shall be required.

13 5. A reasonable opportunity to object and be heard with respect to the
14 Motion for First Supplemental Order and the relief requested therein has been
15 afforded to all persons and entities set forth by the Standing Order, and as
16 required by the Purchase Agreement, including the Payees, the Annuity Provider,
17 and the Obligor.

18 6. The Creditors' Trusts' Trust Portfolio Property with the Payees, in
19 which Payees agreed to assign, and the Creditors' Trusts agreed to purchase
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21

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1 certain payments payable under a structured settlement agreement, is hereby
2 assigned to Purchaser.

3 7. The Creditors' Trusts hereby assign the Periodic Payments to the
4 Purchaser. The Annuity Provider and Obligor will remit the Periodic Payments in
5 accordance with the payment streams set forth in said Exhibit A to the Transferee
6 at the following address: c/o Commonwealth Trust Company, 29 Hill Road,
7 Wilmington, Delaware 19806, or such other address as the Transferee, or its
8 successor(s), may designate.

9 8. The Periodic Payments shall be made to the Transferee even in the
10 event of death of a Payee. As of the date of entry of the First Supplemental Order,
11 Payees no longer have the power or authority to request changes to a Payee's
12 address or beneficiary designation relating to the Periodic Payments. The Annuity
13 Provider and Obligor shall remit the Periodic Payments to Transferee.

14 9. By making and delivering the Periodic Payments to the Transferee as
15 set forth herein, the Annuity Provider and Obligor have no liability to the Payees
16 for making the payments to the Transferee.

17 10. The Transferee is hereby liable to the Annuity Provider and Obligor
18 for any liabilities, taxes, or costs of any kind, including reasonable costs and
19 attorneys' fees arising from compliance by the Annuity Provider and Obligor with
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1 the First Supplemental Order and/or arising as a consequence of the Transferee's
2 failure to comply with applicable law.

3 11. The First Supplemental Order in no way modifies or negates the
4 ownership or control of the underlying contract by the Obligor and is entered
5 without prejudice to the rights of the Annuity Provider and the lack of opposition
6 by the Annuity Provider and Obligor to this transfer, and their compliance with
7 the First Supplemental Order, and the Court's entry of the First Supplemental
8 Order, shall not constitute evidence in this or any other matter regarding: (i) the
9 assignability of payments under a structured settlement agreement or annuity
10 contract or related contracts or whether such payments can be assigned; (ii) the
11 enforceability of provisions that restrict and/or preclude assignment of payments
12 under a structured settlement agreement or annuity contract or related contracts
13 or orders; (iii) the validity of other transactions entered into by Transferee; or
14 (iv) whether the Annuity Provider and the Obligor have waived any rights in
15 connection with any other litigation or claims or rights other than the rights to
16 the Periodic Payments as described above.

20 12. The First Supplemental Order is binding upon and inures to the
21 benefit of any and all successors and assigns of the (a) Creditors' Trusts, (b) the
22 Purchaser, (c) the Payees, (d) the Transferee, and (e) other interested parties.

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1 13. The Court hereby retains jurisdiction to interpret and enforce the
2 provisions of the First Supplemental Order in all respects, including, without
3 limitation, retaining exclusive jurisdiction to determine or resolve any and all
4 objections to or disputes among the parties with respect to the matters set forth
5 therein, provided however that, in the event the Court abstains from exercising,
6 or declines to exercise, jurisdiction with respect to any matter referred to in this
7 paragraph or is without jurisdiction, such abstention, refusal, or lack of
8 jurisdiction shall have no effect upon and shall not control, prohibit, or limit the
9 exercise of jurisdiction of any other court having competent jurisdiction with
10 respect to any such matter.

13 14. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and
14 6006(d), the First Supplemental Order shall not be stayed for ten (10) days after
15 entry thereof, but is effective and enforceable immediately upon issuance thereof.
16 Time is of the essence in closing the transactions referenced herein, and the
17 Creditors' Trusts and the Purchaser intend to close such transactions as soon as
18 practicable. Therefore, any party objecting to entry of the First Supplemental
19 Order must exercise due diligence in filing an appeal and pursuing a stay, or risk
20 its appeal being foreclosed as moot.

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1 15. The First Supplemental Order shall be entered in the form attached
2 to the Motion for First Supplemental Order as Exhibit C.
3
4
5 Presented by:

6 DAVIDSON ♦ MEDEIROS

7 /s/ Barry W. Davidson
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8 Attorney for Metropolitan Mortgage
9 & Securities Co., Inc. and the
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10 KUTAK ROCK LLP

11 /s/ John J. Jolley, Jr.
John J. Jolley, Jr., NE Bar # 20726
12 Attorney for Summit Securities, Inc.
13 and the Summit Creditors' Trust
14



15 
16 Patricia C. Williams
17 Bankruptcy Judge
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